

Amendment No. _____

Signature of Sponsor

FILED
Date _____
Time _____
Clerk _____
Comm. Amdt. _____

AMEND Senate Bill No. 2504

House Bill No. 2279*

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 13, Chapter 24, is amended by adding the following new part:

13-24-401. Short title.

This part shall be known and may be cited as the "Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018."

13-24-402. Part definitions.

As used in this part:

(1) "Applicant" means any person who submits an application pursuant to this part;

(2) "Application" means a request submitted by an applicant to an authority:

(A) For a permit to deploy or colocate small wireless facilities in the ROW; or

(B) To approve the installation or modification of a PSS associated with deployment or colocation of small wireless facilities in the ROW;

(3)

(A) "Authority" means:



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(i) Within a municipal boundary, the municipality, regardless of whether such municipality is a metropolitan government;

(ii) Within a county and outside a municipal boundary, the county; or

(iii) Upon state-owned property, the state;

(B) "Authority" does not include a government-owned electric, gas, water, or wastewater utility that is a division of, or affiliated with, a municipality, metropolitan government, or county for any purpose of this part, and the decision of the utility regarding a request to attach to or modify the plant, facilities, or equipment owned by the utility shall not be governed by this part;

(4) "Authority-owned PSS" means a PSS owned by an authority but does not include a PSS owned by a distributor of electric power, regardless of whether an electric distributor is investor-owned, cooperatively-owned, or government-owned;

(5) "Colocate," "colocating", and "colocation" mean, in their respective noun and verb forms, to install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a PSS. "Colocation", "collocate", and "collocating" do not include the installation of a new PSS or replacement of authority-owned PSS;

(6) "Communications facility" means the set of equipment and network components, including wires and cables and associated facilities, used by a communications service provider to provide communications service;

(7) "Communications service" means cable service as defined in 47 U.S.C. § 522(6), telecommunications service as defined in 47 U.S.C. § 153(53), information service as defined in 47 U.S.C. § 153(24) or wireless service;

(8) "Communications service provider" means a cable operator as defined in 47 U.S.C. § 522(5), a telecommunications carrier as defined in 47 U.S.C. § 153(51), a provider of information service as defined in 47 U.S.C. § 153(24), a video service provider as defined in § 7-59-303, or a wireless provider;

(9) "Fee" means a one-time, nonrecurring charge;

(10) "Historic district" means a property or area zoned as a historic district or zone pursuant to § 13-7-404;

(11) "Local authority" means an authority that is either a municipality, regardless of whether the municipality is a metropolitan government, or a county, and does not include an authority that is the state;

(12) "Micro wireless facility" means a small wireless facility that:

(A) Does not exceed twenty-four inches (24") in length, fifteen inches (15") in width, and twelve inches (12") in height; and

(B) The exterior antenna, if any, does not exceed eleven inches (11") in length;

(13) "Person" means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including an authority;

(14) "Potential support structure for a small wireless facility" or "PSS" means a pole or other structure that is or could be used in whole or in part to support infrastructure or network components that deliver communications and includes structures used for electric distribution, lighting, traffic control, signage, or a similar function, including poles installed solely for the colocation of a small wireless facility. When "PSS" is modified by the term "new," then "new PSS" means a PSS that does not exist at the time the application is submitted, including, but not limited to, a PSS that will replace an existing pole;

(15) "Rate" means a recurring charge;

(16) "Right-of-way" or "ROW" means the space, in, upon, above, along, across, and over all public streets, highways, avenues, roads, alleys, sidewalks, tunnels, viaducts, bridges, skywalks under the control of the authority, and any unrestricted public utility easement established, dedicated, platted, improved, or devoted for utility purposes and accepted as such public utility easement by the authority, but excluding lands other than streets that are owned by the authority;

(17)

(A) "Small wireless facility" means a wireless facility with:

(i) An antenna that could fit within an enclosure of no more than six (6) cubic feet in volume; and

(ii) Other wireless equipment in addition to the antenna that is cumulatively no more than twenty-eight (28) cubic feet in volume, regardless of whether the facility is ground-mounted or pole-mounted. For purposes of this subdivision (17)(A)(ii), "other wireless equipment" does not include an electric meter, concealment element, telecommunications demarcation box, grounding equipment, power transfer switch, cut-off switch, or a vertical cable run for the connection of power and other services; and

(B) "Small wireless facility" includes a micro wireless facility;

(18) "Wireline backhaul facility" means a communications facility used to transport communications services by wire from a wireless facility to a network;

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(A) "Wireless facility" means equipment at a fixed location that enables wireless services between user equipment and a communications network, including:

(i) Equipment associated with wireless services; and

(ii) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration;

(B) "Wireless facility" does not include:

(i) The structure or improvements on, under, or within which the equipment is colocated; or

(ii) Coaxial or fiber-optic cable that is between a PSS and other PSSs, including wireline backhaul or communications facilities that otherwise are not immediately adjacent to or directly associated with a particular antenna; and

(C) "Wireless facility" includes small wireless facilities;

(20) "Wireless provider" means a person who provides wireless service; and

(21) "Wireless services" means any service using licensed or unlicensed spectrum, including the use of WiFi, whether at a fixed location or mobile, provided to the public.

13-24-403. Construction of part.

This part shall be construed to maximize investment in wireless connectivity across the state by creating a uniform and predictable framework that limits local obstacles to deployment of small wireless facilities and to encourage, where feasible, shared use of public infrastructure and colocation in a manner that is the most technology neutral and nondiscriminatory.

13-24-404. Local option and local preemption.

(a) Nothing in this part requires any local authority to promulgate any limits, permitting requirements, zoning requirements, approval policies, or any process to obtain permission to deploy small wireless facilities. However, any local authority that promulgates limits, permitting requirements, zoning requirements, approval policies, or

processes relative to deployment of small wireless facilities shall not impose limits, requirements, policies, or processes that are:

- (1) More restrictive than requirements, policies, or processes set forth in this part;
- (2) In excess of that which is granted by this part; or
- (3) Otherwise in conflict with this part.

(b) Any local authority limits, requirements, policies, or processes that are more restrictive, in conflict with, or in excess of that which is granted by this part are void, regardless of the date on which the requirement, policy, or process was enacted or became law.

13-24-405. Existing law unaffected.

This part does not:

- (1) Create regulatory jurisdiction for any subdivision of the state regarding communications services that do not exist under applicable law, regardless of the technology used to deliver the services;
- (2) Restrict access granted by § 65-21-201 or expand access authorized under § 54-16-112;
- (3) Authorize the creation of local taxation in the form of ROW taxes, rates, or fees that exceed the cost-based fees authorized under existing law, except that the specific fees or rates established pursuant to this part do not exceed cost;
- (4) Alter or exempt any entity from the franchising requirements for providing video services or cable services set forth in title 7, chapter 59; or
- (5) Apply to any segment of the statewide P25 interoperable communications system governed by § 4-3-2018.

13-24-406. Prohibited activities.

An authority shall not:

(1) Enter into an exclusive arrangement with any person for use of a ROW for the construction, operation, marketing, or maintenance of small wireless facilities;

(2) Discriminate by prohibiting an applicant from making any type of installation that is generally permitted when performed by other entities entitled to deploy infrastructure in a ROW or by imposing any maintenance or repair obligations not generally applicable to all entities entitled to deploy infrastructure in a ROW;

(3) Impose discriminatory prohibitions against deploying a new PSS for small wireless facilities in a ROW. Only requirements imposed generally to other entities entitled to deploy infrastructure in a ROW may be applied to prohibit an applicant's deployment of a new PSS in a ROW; or

(4) Except as provided in this part or otherwise specifically authorized by state law, adopt or enforce any regulations or requirements on the placement or operation of communications facilities in a ROW by a communications service provider authorized by state or local law to operate in a ROW; regulate any communications services; or impose or collect any tax, fee, or charge for the provision of communications service over the communications service provider's communications facilities in a ROW.

13-24-407. Uniform local authority fees for deployment of small wireless facilities; exceptions.

(a) The following are the maximum fees and rates that may be charged to an applicant by a local authority for deployment of a small wireless facility:

(1) The maximum application fee is one hundred dollars (\$100) each for the first five (5) small wireless facilities and fifty dollars (\$50.00) for each additional small wireless facility; and

(2) The maximum annual rate for colocation of a small wireless facility

on a local authority-owned PSS is one hundred dollars (\$100).

(b) In addition to the maximum fees and rates described in subsection (a), a local authority shall not require applicants:

(1) To pay fees or reimburse costs for the services or assistance provided to the authority by a consultant or third party retained by the authority relative to deployment of small wireless facilities; or

(2) To file additional applications or permits for regular maintenance, replacement, or repairs made to an applicant's own facilities.

(c) This section does not prohibit an authority from requiring generally applicable work or traffic permits, or from collecting the same applicable fees for such permits, for deployment of a small wireless facility or new PSS as long as the work or traffic permits are issued and associated fees are charged on the same basis as other construction activity in a ROW.

(d) This section does not prohibit an authority from retaining any consultant or third party when the fees and costs for the consultant or third party are paid by the authority, using the authority's own funds, rather than requiring applicants to reimburse or pay for the consultants or third parties.

(e)

(1) Except for the application fees, permit fees, and colocation rates set out in this section, no local authority shall require additional rates or fees of any kind, including, but not limited to, rental fees, access fees, or site license fees for the initial deployment or the continuing presence of a small wireless facility.

(2) No authority shall require approval, or any applications, fees, or rates, for:

(A) Routine maintenance of a small wireless facility, which maintenance does not require the installation of a new PSS or the replacement of a PSS;

(B) The replacement of a small wireless facility with another small wireless facility that is smaller than the size conditions set out in the definition of "small wireless facility" in § 13-24-402; or

(C) The installation, placement maintenance, operation, or replacement of a micro wireless facility that is suspended on cables that are strung between existing PSSs, in compliance with the National Electrical Safety Code as set out in § 68-101-104.

(3) No authority shall require execution of any access agreement or site license agreement as a condition of deployment of a small wireless facility in a ROW.

(4) An authority shall not directly or indirectly require an applicant to perform services for the authority or provide goods to the authority such as in-kind contributions to the authority, including, but not limited to, reserving fiber, conduit, or pole space for the authority in exchange for deployment of small wireless facilities.

13-24-408. Uniform requirements for deployment and maintenance of small wireless facilities; exceptions.

(a)

(1) No authority shall restrict the size, height, or otherwise regulate the appearance or placement of small wireless facilities, or prohibit colocation on PSSs, except an authority may require that:

(A) A new PSS installed or an existing PSS replaced in the ROW not exceed the greater of:

(i) Ten feet (10') in height above the tallest existing PSS in place as of the effective date of this part that is located within five hundred feet (500') of the new PSS and, in residential neighborhoods, the tallest existing PSS that is located within five

hundred feet (500') of the new PSS and is also located within the same residential neighborhood as the new PSS; or

(ii) Fifty feet (50') above ground level;

(B) Small wireless facilities deployed in the ROW after the effective date of this part shall not extend:

(i) More than ten feet (10') above an existing PSS in place as of the effective date of this part; or

(ii) On a new PSS, ten feet (10') above the height permitted for a new PSS under this section.

(2) An applicant may construct, modify, and maintain a PSS or small wireless facility that exceeds the height limits set out in subdivision (a)(1), only if the authority's generally applicable zoning regulations allow for the taller structures.

(b) An authority may require an applicant to comply with an authority's nondiscriminatory requirements for placing all electric, cable, and communications facilities underground in a designated area of a ROW if the authority:

(1) Has required all electric, communications, and cable facilities other than authority-owned PSSs and attachments to be placed underground by a date certain that is three (3) months prior to the submission of the application;

(2) Does not prohibit the replacement of authority-owned PSSs in the designated area when the design for the new PSS meets the authority's design aesthetic plan for the area and all other applicable criteria provided for in this part; and

(3) Permits applicants to seek a waiver of the underground requirements for the placement of a new PSS to support small wireless facilities and the approval or nonapproval of the waivers are decided in a nondiscriminatory manner.

(c)

(1) Except for facilities excluded from evaluation for effects on historic properties under 47 C.F.R. § 1.1307(a)(4) or any subsequently enacted similar regulations, an authority may require reasonable, nondiscriminatory, and technology neutral design or concealment measures in a historic district if:

(A) The design or concealment measures do not have the effect of prohibiting any applicant's technology or substantially reducing the functionality of the small wireless facility; and

(B) The design or concealment measures are not considered a part of the small wireless facility for purposes of the size conditions contained in the definition of "small wireless facility" in § 13-24-402.

(2) Nothing in this section limits an authority's enforcement of historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C. § 332(c)(7), the requirements for facility modifications under 47 U.S.C. § 1455(a), or the National Historic Preservation Act of 1966 codified in 54 U.S.C. § 300101 et seq., and the regulations adopted and amended from time to time to implement those laws.

(d) No authority shall require network design for small wireless facilities, including mandating the selection of any specific PSS or category of PSS to which an applicant must attach any part of its network. No authority shall limit the placement of small wireless facilities by imposing minimum separation distances for small wireless facilities or the structures on which the facilities are colocated.

(e) An authority may prohibit colocation on authority-owned PSSs that are identified as PSSs the mast arms of which are routinely removed to accommodate frequent events, including, but not limited to, regularly scheduled street festivals or parades. To qualify for this exception, an authority must publish a list of such PSSs on its website and may prohibit colocation only if the PSS has been designated as an

exception pursuant to this subsection (e) thirty (30) days prior to an application. An authority may grant a waiver to allow colocation on a PSS designated under this subsection (e) if an applicant demonstrates that its design for colocation will not interfere with the operation of the PSS and otherwise meets all other requirements of this part.

(f) An applicant may replace existing authority-owned PSS when colocating a small wireless facility, and the replacement PSSs shall be owned by the authority. When replacing a PSS, any replacement PSS must reasonably conform to the design aesthetics of the PSS being replaced. When replacing a PSS used for lighting, an authority may require the applicant to provide lighting on the replacement PSS and the lighting shall become the property of the authority upon completion of the authority's inspection of a new PSS to ensure it is in working condition, and after satisfactory inspection, the authority's ownership shall include responsibility for electricity and maintenance.

13-24-409. Uniform application procedures for local authorities.

(a) A local authority may require an applicant to seek permission by application to colocate a small wireless facility or install a new or modified PSS associated with a small wireless facility and obtain one (1) or more work permits, as long as the work permits are of general applicability and do not apply exclusively to wireless facilities.

(b) If a local authority requires an applicant to seek permission pursuant to subsection (a), the authority must comply with the following:

(1) A local authority shall allow an applicant to include up to twenty (20) small wireless facilities within a single application;

(2) A local authority shall, within ten (10) days of receiving an application, determine whether an application is complete and notify the applicant. If an application is incomplete, a local authority must specifically identify the missing information in writing when the applicant is notified;

(3) A local authority shall process all applications on a nondiscriminatory basis;

(4) A local authority shall approve or deny an application within sixty (60) days of receipt of the application. If the application is not approved or denied within sixty (60) days, the application is deemed approved. A local authority shall not extend the sixty-day period to provide for additional or supplemental review by additional departments or designees. However, the sixty-day period shall be tolled if a local authority sends notice to the applicant that the application is incomplete within ten (10) days after the initial application. Any tolling within ten (10) days shall cease once additional or supplemental information is provided to the authority. Notwithstanding this subdivision (b)(4) to the contrary, the authority and the applicant may mutually agree to toll the sixty-day period;

(5) A local authority shall provide written explanation for denying an application concurrent with issuance of the denial. A local authority shall not deny an application for any reason not expressly provided in this part;

(6) An applicant may cure deficiencies identified by the authority and resubmit an application within thirty (30) days of the denial without paying an additional application fee. A local authority shall approve or deny the revised application within thirty (30) days from the time the revised application is submitted to the authority. Any subsequent review of an application must be limited to the deficiencies cited in the denial or deficiencies that relate to changes in the application and that were not contained in the original application;

(7) A local authority shall not, either expressly or de facto, discontinue its application process or prohibit deployment under the terms of this part prior to adoption of any application process; and

(8) A local authority shall not require applicants to provide any information not listed in this subdivision (b)(8). A local authority may require the following information to be provided in an application:

(A) A preliminary site plan with a diagram or engineering drawing depicting the design for installation of the small wireless facility;

(B) The location of the site, including the latitudinal and longitudinal coordinates of the specific location of the site;

(C) Identification of any third party upon whose PSS the applicant intends to colocate and certification by the applicant that it has obtained approval from the third party;

(D) The applicant's identifying information and the identifying information of the owner of the small wireless facility and certification by the applicant or the owner that such person agrees to pay applicable fees and rates, repair damage, and comply with all nondiscriminatory and generally applicable ROW requirements for deployment of any associated infrastructure that is not a small wireless facility;

(E) The applicant's certification of compliance with surety bond, insurance, or indemnification requirements, if any, that the local authority imposes on a general and non-discriminatory basis upon entities that are entitled to deploy infrastructure in the ROW; and

(F) The applicant's certification that the proposed site plan and design plans meet or exceed all applicable engineering, materials, electrical, and safety standards.

(c) An applicant must complete deployment of the applicant's small wireless facilities within one (1) year of the issuance of permits and approval of applications for the small wireless facilities unless the authority and the applicant agree to extend the period, or delay is caused by a lack of commercial power or communications transport

facilities to the site. If an applicant fails to complete deployment within the time required pursuant to this subsection (c), then the authority may require that the applicant complete a new application.

(d) The approval of the installation, placement, maintenance, or operation of a small wireless facility pursuant to this part does not authorize the provision of any communications service or the installation, placement, maintenance, or operation of any communications facility, including a wireline backhaul facility, other than a small wireless facility, in a right of way.

13-24-410. Uniform application process applicable to the state as an authority.

(a) In instances in which an applicant seeks to deploy a small wireless facility or new PSS within state ROW or to colocate on state-owned PSSs, an application must be made to the department of transportation.

(b) No application fee is required and no attachment rate applies. The department of transportation may impose inspection costs in the same manner such costs are imposed with respect to other entities that deploy infrastructure in state ROW.

(c) The application must conform to the department of transportation's rules applicable to those entities permitted to deploy infrastructure in state ROW.

(d) The department of transportation shall comply with the timetable for review of applications by local authorities set out in § 13-24-409, except that the department of transportation may extend the time for review and shall provide notice to the applicant of additional time needed. Such applications are not deemed approved until the application is affirmatively acted upon.

(e) Applications seeking to deploy small wireless facilities in state ROW or to colocate small wireless facilities on state-owned PSS may be denied if the design for deployment is inconsistent with those rules generally applied by the department of transportation to other entities entitled to deploy infrastructure in state ROW, including those rules limiting deployment within the clear zone of a highway ROW or in areas

where the department of transportation has obtained access control prohibiting any right or easement of access from properties adjacent to the highway ROW.

(f) The department of transportation shall provide written explanation of the need for extension of time to review or of the reasons for denial at the time of the extension or denial.

13-24-411. Authority powers preserved.

Consistent with the limitations set forth in this part, an authority may require applicants to:

(1) Follow generally applicable and nondiscriminatory requirements that structures and facilities placed within a ROW must be constructed and maintained as not to obstruct or hinder the usual travel upon pedestrian or automotive travel ways or public safety on the ROW or obstruct the legal use of the ROW by utilities;

(2) Follow an aesthetic plan established by the authority for a defined area, neighborhood, or zone by complying with generally applicable and nondiscriminatory standards on all entities entitled to deploy infrastructure in a ROW, except that an authority shall not apply standards in a manner that precludes all deployment of small wireless facilities or precludes deployment of small wireless facilities as a permitted use pursuant to zoning requirements and an authority shall provide detailed explanation of any denial based on the failure of the design to conform to the aesthetic plan;

(3) An authority may impose generally applicable and nondiscriminatory requirements to repair damage caused by entities entitled to deploy infrastructure in a ROW, including damage to public roadways or to other utility facilities placed in a ROW; and

(4) An authority may impose generally applicable and nondiscriminatory requirements for applicants to maintain insurance, provide surety bonds, or

provide indemnification for claims arising from the applicant's negligence to the same extent the authority applies such requirements generally to entities entitled to deploy infrastructure in a ROW.

13-24-412. Private right of action.

Any party aggrieved by the failure of an authority to act in accordance with this part may seek remedy in the chancery court for the county in which the applicant attempted to deploy or has deployed a small wireless facility, unless the claim seeks a remedy against the state, in which case the claim must be brought in the chancery court of Davidson County. The court may order an appropriate remedy to address any action inconsistent with this part.

SECTION 2. The headings to sections in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.

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(ii) Within a county and outside a municipal boundary, the county; or

(iii) Upon state-owned property, the state;

(B) "Authority" does not include a government-owned electric, gas, water, or wastewater utility that is a division of, or affiliated with, a municipality, metropolitan government, or county for any purpose of this part, and the decision of the utility regarding a request to attach to or modify the plant, facilities, or equipment owned by the utility shall not be governed by this part;

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- (2) Restrict access granted by § 65-21-201 or expand access authorized under § 54-16-112;
- (3) Authorize the creation of local taxation in the form of ROW taxes, rates, or fees that exceed the cost-based fees authorized under existing law, except that the specific fees or rates established pursuant to this part do not exceed cost;
- (4) Alter or exempt any entity from the franchising requirements for providing video services or cable services set forth in title 7, chapter 59; or
- (5) Apply to any segment of the statewide P25 interoperable communications system governed by § 4-3-2018.

13-24-406. Prohibited activities.

An authority shall not:

(1) Enter into an exclusive arrangement with any person for use of a ROW for the construction, operation, marketing, or maintenance of small wireless facilities;

(2) Discriminate by prohibiting an applicant from making any type of installation that is generally permitted when performed by other entities entitled to deploy infrastructure in a ROW or by imposing any maintenance or repair obligations not generally applicable to all entities entitled to deploy infrastructure in a ROW;

(3) Impose discriminatory prohibitions against deploying a new PSS for small wireless facilities in a ROW. Only requirements imposed generally to other entities entitled to deploy infrastructure in a ROW may be applied to prohibit an applicant's deployment of a new PSS in a ROW; or

(4) Except as provided in this part or otherwise specifically authorized by state law, adopt or enforce any regulations or requirements on the placement or operation of communications facilities in a ROW by a communications service provider authorized by state or local law to operate in a ROW; regulate any communications services; or impose or collect any tax, fee, or charge for the provision of communications service over the communications service provider's communications facilities in a ROW.

13-24-407. Uniform local authority fees for deployment of small wireless facilities; exceptions.

(a) The following are the maximum fees and rates that may be charged to an applicant by a local authority for deployment of a small wireless facility:

(1) The maximum application fee is one hundred dollars (\$100) each for the first five (5) small wireless facilities and fifty dollars (\$50.00) for each additional small wireless facility; and

(2) The maximum annual rate for colocation of a small wireless facility

on a local authority-owned PSS is one hundred dollars (\$100).

(b) In addition to the maximum fees and rates described in subsection (a), a local authority shall not require applicants:

(1) To pay fees or reimburse costs for the services or assistance provided to the authority by a consultant or third party retained by the authority relative to deployment of small wireless facilities; or

(2) To file additional applications or permits for regular maintenance, replacement, or repairs made to an applicant's own facilities.

(c) This section does not prohibit an authority from requiring generally applicable work or traffic permits, or from collecting the same applicable fees for such permits, for deployment of a small wireless facility or new PSS as long as the work or traffic permits are issued and associated fees are charged on the same basis as other construction activity in a ROW.

(d) This section does not prohibit an authority from retaining any consultant or third party when the fees and costs for the consultant or third party are paid by the authority, using the authority's own funds, rather than requiring applicants to reimburse or pay for the consultants or third parties.

(e)

(1) Except for the application fees, permit fees, and colocation rates set out in this section, no local authority shall require additional rates or fees of any kind, including, but not limited to, rental fees, access fees, or site license fees for the initial deployment or the continuing presence of a small wireless facility.

(2) No authority shall require approval, or any applications, fees, or rates, for:

(A) Routine maintenance of a small wireless facility, which maintenance does not require the installation of a new PSS or the replacement of a PSS;

(B) The replacement of a small wireless facility with another small wireless facility that is smaller than the size conditions set out in the definition of "small wireless facility" in § 13-24-402; or

(C) The installation, placement maintenance, operation, or replacement of a micro wireless facility that is suspended on cables that are strung between existing PSSs, in compliance with the National Electrical Safety Code as set out in § 68-101-104.

(3) No authority shall require execution of any access agreement or site license agreement as a condition of deployment of a small wireless facility in a ROW.

(4) An authority shall not directly or indirectly require an applicant to perform services for the authority or provide goods to the authority such as in-kind contributions to the authority, including, but not limited to, reserving fiber, conduit, or pole space for the authority in exchange for deployment of small wireless facilities.

13-24-408. Uniform requirements for deployment and maintenance of small wireless facilities; exceptions.

(a)

(1) No authority shall restrict the size, height, or otherwise regulate the appearance or placement of small wireless facilities, or prohibit colocation on PSSs, except an authority may require that:

(A) A new PSS installed or an existing PSS replaced in the ROW not exceed the greater of:

(i) Ten feet (10') in height above the tallest existing PSS in place as of the effective date of this part that is located within five hundred feet (500') of the new PSS and, in residential neighborhoods, the tallest existing PSS that is located within five

hundred feet (500') of the new PSS and is also located within the same residential neighborhood as the new PSS; or

(ii) Fifty feet (50') above ground level;

(B) Small wireless facilities deployed in the ROW after the effective date of this part shall not extend:

(i) More than ten feet (10') above an existing PSS in place as of the effective date of this part; or

(ii) On a new PSS, ten feet (10') above the height permitted for a new PSS under this section.

(2) An applicant may construct, modify, and maintain a PSS or small wireless facility that exceeds the height limits set out in subdivision (a)(1), only if the authority's generally applicable zoning regulations allow for the taller structures.

(b) An authority may require an applicant to comply with an authority's nondiscriminatory requirements for placing all electric, cable, and communications facilities underground in a designated area of a ROW if the authority:

(1) Has required all electric, communications, and cable facilities other than authority-owned PSSs and attachments to be placed underground by a date certain that is three (3) months prior to the submission of the application;

(2) Does not prohibit the replacement of authority-owned PSSs in the designated area when the design for the new PSS meets the authority's design aesthetic plan for the area and all other applicable criteria provided for in this part; and

(3) Permits applicants to seek a waiver of the underground requirements for the placement of a new PSS to support small wireless facilities and the approval or nonapproval of the waivers are decided in a nondiscriminatory manner.

(c)

(1) Except for facilities excluded from evaluation for effects on historic properties under 47 C.F.R. § 1.1307(a)(4) or any subsequently enacted similar regulations, an authority may require reasonable, nondiscriminatory, and technology neutral design or concealment measures in a historic district if:

(A) The design or concealment measures do not have the effect of prohibiting any applicant's technology or substantially reducing the functionality of the small wireless facility; and

(B) The design or concealment measures are not considered a part of the small wireless facility for purposes of the size conditions contained in the definition of "small wireless facility" in § 13-24-402.

(2) Nothing in this section limits an authority's enforcement of historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C. § 332(c)(7), the requirements for facility modifications under 47 U.S.C. § 1455(a), or the National Historic Preservation Act of 1966 codified in 54 U.S.C. § 300101 et seq., and the regulations adopted and amended from time to time to implement those laws.

(d) No authority shall require network design for small wireless facilities, including mandating the selection of any specific PSS or category of PSS to which an applicant must attach any part of its network. No authority shall limit the placement of small wireless facilities by imposing minimum separation distances for small wireless facilities or the structures on which the facilities are colocated.

(e) An authority may prohibit colocation on authority-owned PSSs that are identified as PSSs the mast arms of which are routinely removed to accommodate frequent events, including, but not limited to, regularly scheduled street festivals or parades. To qualify for this exception, an authority must publish a list of such PSSs on its website and may prohibit colocation only if the PSS has been designated as an

exception pursuant to this subsection (e) thirty (30) days prior to an application. An authority may grant a waiver to allow colocation on a PSS designated under this subsection (e) if an applicant demonstrates that its design for colocation will not interfere with the operation of the PSS and otherwise meets all other requirements of this part.

(f) An applicant may replace existing authority-owned PSS when colocating a small wireless facility, and the replacement PSSs shall be owned by the authority. When replacing a PSS, any replacement PSS must reasonably conform to the design aesthetics of the PSS being replaced. When replacing a PSS used for lighting, an authority may require the applicant to provide lighting on the replacement PSS and the lighting shall become the property of the authority upon completion of the authority's inspection of a new PSS to ensure it is in working condition, and after satisfactory inspection, the authority's ownership shall include responsibility for electricity and maintenance.

13-24-409. Uniform application procedures for local authorities.

(a) A local authority may require an applicant to seek permission by application to colocate a small wireless facility or install a new or modified PSS associated with a small wireless facility and obtain one (1) or more work permits, as long as the work permits are of general applicability and do not apply exclusively to wireless facilities.

(b) If a local authority requires an applicant to seek permission pursuant to subsection (a), the authority must comply with the following:

(1) A local authority shall allow an applicant to include up to twenty (20) small wireless facilities within a single application;

(2) A local authority shall, within ten (10) days of receiving an application, determine whether an application is complete and notify the applicant. If an application is incomplete, a local authority must specifically identify the missing information in writing when the applicant is notified;

(3) A local authority shall process all applications on a nondiscriminatory basis;

(4) A local authority shall approve or deny an application within sixty (60) days of receipt of the application. If the application is not approved or denied within sixty (60) days, the application is deemed approved. A local authority shall not extend the sixty-day period to provide for additional or supplemental review by additional departments or designees. However, the sixty-day period shall be tolled if a local authority sends notice to the applicant that the application is incomplete within ten (10) days after the initial application. Any tolling within ten (10) days shall cease once additional or supplemental information is provided to the authority. Notwithstanding this subdivision (b)(4) to the contrary, the authority and the applicant may mutually agree to toll the sixty-day period;

(5) A local authority shall provide written explanation for denying an application concurrent with issuance of the denial. A local authority shall not deny an application for any reason not expressly provided in this part;

(6) An applicant may cure deficiencies identified by the authority and resubmit an application within thirty (30) days of the denial without paying an additional application fee. A local authority shall approve or deny the revised application within thirty (30) days from the time the revised application is submitted to the authority. Any subsequent review of an application must be limited to the deficiencies cited in the denial or deficiencies that relate to changes in the application and that were not contained in the original application;

(7) A local authority shall not, either expressly or de facto, discontinue its application process or prohibit deployment under the terms of this part prior to adoption of any application process; and

(8) A local authority shall not require applicants to provide any information not listed in this subdivision (b)(8). A local authority may require the following information to be provided in an application:

(A) A preliminary site plan with a diagram or engineering drawing depicting the design for installation of the small wireless facility;

(B) The location of the site, including the latitudinal and longitudinal coordinates of the specific location of the site;

(C) Identification of any third party upon whose PSS the applicant intends to colocate and certification by the applicant that it has obtained approval from the third party;

(D) The applicant's identifying information and the identifying information of the owner of the small wireless facility and certification by the applicant or the owner that such person agrees to pay applicable fees and rates, repair damage, and comply with all nondiscriminatory and generally applicable ROW requirements for deployment of any associated infrastructure that is not a small wireless facility;

(E) The applicant's certification of compliance with surety bond, insurance, or indemnification requirements, if any, that the local authority imposes on a general and non-discriminatory basis upon entities that are entitled to deploy infrastructure in the ROW; and

(F) The applicant's certification that the proposed site plan and design plans meet or exceed all applicable engineering, materials, electrical, and safety standards.

(c) An applicant must complete deployment of the applicant's small wireless facilities within one (1) year of the issuance of permits and approval of applications for the small wireless facilities unless the authority and the applicant agree to extend the period, or delay is caused by a lack of commercial power or communications transport

facilities to the site. If an applicant fails to complete deployment within the time required pursuant to this subsection (c), then the authority may require that the applicant complete a new application.

(d) The approval of the installation, placement, maintenance, or operation of a small wireless facility pursuant to this part does not authorize the provision of any communications service or the installation, placement, maintenance, or operation of any communications facility, including a wireline backhaul facility, other than a small wireless facility, in a right of way.

13-24-410. Uniform application process applicable to the state as an authority.

(a) In instances in which an applicant seeks to deploy a small wireless facility or new PSS within state ROW or to colocate on state-owned PSSs, an application must be made to the department of transportation.

(b) No application fee is required and no attachment rate applies. The department of transportation may impose inspection costs in the same manner such costs are imposed with respect to other entities that deploy infrastructure in state ROW.

(c) The application must conform to the department of transportation's rules applicable to those entities permitted to deploy infrastructure in state ROW.

(d) The department of transportation shall comply with the timetable for review of applications by local authorities set out in § 13-24-409, except that the department of transportation may extend the time for review and shall provide notice to the applicant of additional time needed. Such applications are not deemed approved until the application is affirmatively acted upon.

(e) Applications seeking to deploy small wireless facilities in state ROW or to colocate small wireless facilities on state-owned PSS may be denied if the design for deployment is inconsistent with those rules generally applied by the department of transportation to other entities entitled to deploy infrastructure in state ROW, including those rules limiting deployment within the clear zone of a highway ROW or in areas

where the department of transportation has obtained access control prohibiting any right or easement of access from properties adjacent to the highway ROW.

(f) The department of transportation shall provide written explanation of the need for extension of time to review or of the reasons for denial at the time of the extension or denial.

13-24-411. Authority powers preserved.

Consistent with the limitations set forth in this part, an authority may require applicants to:

(1) Follow generally applicable and nondiscriminatory requirements that structures and facilities placed within a ROW must be constructed and maintained as not to obstruct or hinder the usual travel upon pedestrian or automotive travel ways or public safety on the ROW or obstruct the legal use of the ROW by utilities;

(2) Follow an aesthetic plan established by the authority for a defined area, neighborhood, or zone by complying with generally applicable and nondiscriminatory standards on all entities entitled to deploy infrastructure in a ROW, except that an authority shall not apply standards in a manner that precludes all deployment of small wireless facilities or precludes deployment of small wireless facilities as a permitted use pursuant to zoning requirements and an authority shall provide detailed explanation of any denial based on the failure of the design to conform to the aesthetic plan;

(3) An authority may impose generally applicable and nondiscriminatory requirements to repair damage caused by entities entitled to deploy infrastructure in a ROW, including damage to public roadways or to other utility facilities placed in a ROW; and

(4) An authority may impose generally applicable and nondiscriminatory requirements for applicants to maintain insurance, provide surety bonds, or

provide indemnification for claims arising from the applicant's negligence to the same extent the authority applies such requirements generally to entities entitled to deploy infrastructure in a ROW.

13-24-412. Private right of action.

Any party aggrieved by the failure of an authority to act in accordance with this part may seek remedy in the chancery court for the county in which the applicant attempted to deploy or has deployed a small wireless facility, unless the claim seeks a remedy against the state, in which case the claim must be brought in the chancery court of Davidson County. The court may order an appropriate remedy to address any action inconsistent with this part.

SECTION 2. The headings to sections in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.